IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2234/2007

WITH

CRIMINAL APPLICATION No. 441 of 2007

(For Intervention)

Bharat Shantaram Gaikar & Anr. ..Applicants.

Vs.

The State of Maharashtra ..Respondent.

Mr Hudlikar with Sudhir Halli, Advocate for the Applicant.

Mr K. V. Saste, APP for the State.

Mr Mayur S. Sonavane, Advocate for Intervenor- Respondent No.2-Original complainant.

CORAM: V.C. DAGA,J.
DATED: 1.8. 2007.

P.C.:-

1. Heard learned counsel for the applicant and the learned APP for the State.

2. Perused application and the material available on record.

3. The applicants (original accused Nos. 1 and 2) have invoked jurisdiction of this Court under Section 438 of the Cr.P.C. in C.R. No. 4 of 2007 registered with Police Station Agripada for the offence punishable under Sections 468, 467, 471 read with Section 34 or 120(B) of the I.P.C.

4. According to the applicants, the complainant Mallappa Shankar Korvi has lodged a complaint against the applicants and others in the 46th Court of Additional Chief Metropolitan Magistrate at Mazgaon, Mumbai on the allegations that the applicants-accused being the Chairman and Secretary respectively of M/s. Ganesh Nagar 'D' (SRA) Co-operative Housing Society Ltd. (hereinafter referred to as the 'the said Society') have cheated the said Society.

5. On receipt of the complaint, the learned Addl.Chief Metropolitan Magistrate, Mazgaon directed police to investigate the matter under Section 156 (3) of the Cr.P.C. and called upon the Investigating Officer to submit final report.

6. The applicants, during the course of hearing, have placed reliance on the resolution dated 30th December,2005 (Exh.A);whereby, the applicant No.1 claims to have been authorized by the Board of Directors of the said Society to sell Transferable

Development Right (for short"T.D.R") owned by the said Society. Accordingly he had agreed to sell those rights in favour of M/s. Universal Textile Water Proof Company Limited at the rate of Rs.1400/- per sq. ft., total consideration of which was in the sum of Rs. 1,62,75,168/-, excluding the amount of unaccounted money around Rs. 37 lac which was to be received in cash. Accordingly agreement was executed on 13.1.2006. However, when some of the members of the said Society objected for such transaction, he claims to have entered into another agreement dated 30.1.2006; wherein, he agreed to sell TDR @ Rs. 1650/- per sq.ft. (i.e. for total amount of sale consideration of Rs. 1,91,81,448.00). Both these documents are produced on record.

7. A resolution dated 30th December, 2005 came to be seized by the Investigating Officer. The resolution dated 30th December, 2005 produced by the applicants does not tally with that of the seized resolution. Both resolutions are at variance. In one resolution no authorization is to be found in

favour of the applicant No.1; whereas, in another resolution the authorization in favour of the applicant no.1 is to be found. One fails to understand how two resolutions were adopted in the same meeting for the same purpose.

8. The complainant is alleging exchange of huge unaccounted money. The prima facie material is available on record to connect the present applicants with the offence alleged against them. Since the involvement of the amount is more than one crore rupees, it is necessary to have thorough investigation which can only be possible by custodial interrogation of the applicants-accused.

9. In the above view of the matter, for the reasons recorded hereinabove and for the reasons recorded by the 7th Ad-hoc Additional Sessions Judge,Greater Bombay vide order dated 29.6.2007, I am not inclined to grant anticipatory bail to the applicants. The application is, therefore, rejected.

10. At this stage, learned counsel for the applicants taking instructions from the applicants, sought time to surrender. Accordingly two weeks time to surrender is granted.

11. In view of the aforesaid order no separate order is necessary on the Criminal Application No.441 of 2007 moved by the Intervenor - complainant, the same stands disposed of accordingly.

(V.C. DAGA,J.)